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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

**No. 1013**

FRANK PARKER and GEORGE MORAN,  
*Petitioners,*

*vs.*

THE PEOPLE OF THE STATE OF ILLINOIS,  
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ILLINOIS AND BRIEF  
IN SUPPORT THEREOF.**

**State Court Opinions Appended**

WM. SCOTT STEWART,  
*Counsel for Petitioners.*



## SUBJECT INDEX.

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	PAGE
Petition for a Writ of Certiorari.....	1
Summary Statement of the Matter Involved.....	1
Specification of Errors to Be Urged.....	3
Basis of the Court's Jurisdiction.....	4
Questions Presented .....	4
Reasons for Granting the Writ.....	5
Prayer for Writ.....	6
Brief in Support of Petition for a Writ of Certiorari	7
The Opinions of the Courts Below.....	7
Jurisdiction .....	7
Statement of the Case.....	11
Errors to Be Urged.....	11
Questions Presented .....	12
Constitutional Provisions Involved.....	12
Propositions of Law Relied on and Citation of Cases .....	13
Argument .....	17
Summary of Argument—	
A. Under the constitution and laws of Illi- nois no person should be twice put in jeopardy .....	17
B. The evidence is insufficient to support the verdict .....	20 j
C. There can be no guilty accessory without a guilty principal.....	20 k
D. The trial court erred in rulings concern- ing evidence, placed undue limitation upon the defense in cross-examination and erred in the matter of giving and refusing instructions .....	20 l
E. Conclusion .....	20 l
Opinion of Supreme Court of Illinois.....	21
Opinion of Appellate Court of Illinois.....	32

## LIST OF AUTHORITIES.

	PAGE
Abie State Bank v. Bryan, 282 U. S. 765, 773.....	9
A. F. of L. v. Swing, 312 Ill. 321.....	20 i
Baltimore & Ohio Southwestern R. Co. v. Burtch, 263 U. S. 540, 543.....	10
Baxter v. People, 3 Gilh. 368.....	14
Brinkmeier v. Missouri Pac. R. Co., 224 U. S. 268, 270 .....	10
Broad River Power Co. v. South Carolina ex rel. Daniel, 281 U. S. 537, 540.....	9
Chapman v. Goodnow, 123 U. S. 540, 548.....	20 j
Chicago, Burlington & Quincy R. Co. v. City of Chi- cago, 166 U. S. 226, 231, 232.....	8
Chicago, Burlington & Quincy R. Co. v. Chicago, 166 U. S. : 6, 242.....	10
Chicago, Burlington & Quincy Ry. v. Illinois ex rel. Drainage Com'rs, 200 U. S. 561, 580, 581.....	9
Chicago G. W. R. Co. v. Basham, 249 U. S. 164.....	8
Chicago M. & St. P. Ry. Co. v. Coogan, 271 U. S. 472, 474 .....	10
Citizens' Bank of Michigan City, Ind. v. Opperman, 249 U. S. 448, 450.....	8
Coates v. People, 72 Ill. 303.....	14
Davis v. People, 22 Colo. 1, 43 Pac. 122.....	13, 18
Davis v. Wechsler, 263 U. S. 22, 24, 25.....	9
Downer v. Richards, 151 U. S. 658, 667.....	10
Drivers Union v. Meadowmoor Co., 312 U. S. 287.....	20 h
Erie Railroad Co. v. Purdy, 185 U. S. 145, 154.....	9
Ex parte Lange, 85 U. S. (18 Wall. 205), 163, 168. .	14, 20 a
Ex parte Ulrich, 42 Fed. 587.....	13, 20 a
Fixmer v. People, 153 Ill. 123.....	14
Fox Film Corporation v. Doyal, 286 U. S. 123, 126, 52 S. Ct. 546, 76 L. Ed. 1010.....	8
Graham v. Gill, 223 U. S. 643, 645.....	10

Great Northern Ry. Co. v. Donaldson, 246 U. S. 121, 124 .....	10
Great Northern Ry. v. Washington, 300 U. S. 154, 167	20 j
Harding Co. v. Harding, 352 Ill. 417.....	13, 18
Hoffman v. Hoffman, 330 Ill. 413.....	13, 18
Honeyman v. Hanan, 300 U. S. 14, 18.....	20 j
In re Nielson, 131 U. S. 672.....	20 f
International Harvester Co. v. Missouri ex inf. Attor- ney General, 234 U. S. 199, 206, 207.....	9
Iowa-Des Moines Nat. Bank v. Bennett, 284 U. S. 239	8
Iowa-Des Moines Nat. Bank v. Stewart, 283 U. S. 813	8
Johnson v. New York Life Ins. Co., 187 U. S. 491, 495	10
Kaufman v. Tredway, 195 U. S. 271, 274.....	10
Lawrence v. State Tax Commission of Mississippi, 286 U. S. 276, 282.....	9
Lessieur v. Price, 12 How. 59, 72, 13 L. Ed. 893.....	8
Lisenba v. California (Opinion December 8, 1941)...	20 i
Lochner v. New York, 198 U. S. 45, 76.....	20 l
Mammoth Mining Co. v. Grand Central Mining Co., 213 U. S. 72, 73.....	10
Missouri K. & T. Ry. Co. v. Haber, 169 U. S. 613, 639 .....	10
Neil v. Chavers, 348 Ill. 326.....	13, 18
Norris v. Alabama, 294 U. S. 587.....	20 i
Ohio Public Service Co. v. State of Ohio ex rel. Fritz, 275 U. S. 12.....	8
Patterson v. State of Alabama, 294 U. S. 600, 602.....	9
People v. Darr, 255 Ill. 456, 462.....	18
People v. Greenspaw, 346 Ill. 484, 486.....	14, 17
People v. Kidd, 357 Ill. 133.....	19
People v. Miner, 144 Ill. 308.....	14, 20 e
People v. Trumbley, 252 Ill. 29, 35.....	14
People v. Walker, 361 Ill. 482.....	20 k
Petition of Blacklidge, 359 Ill. 482.....	13, 18
Puget Sound Power & Light Co. v. King County, 264 U. S. 22, 23-25.....	8

	PAGE
Seaboard Air Line Ry. v. Padgett, 236 U. S. 668, 673	10
Smiley v. Kansas, 196 U. S. 447, 454.....	10
Smith v. Auld, 31 Kan. 262, 1 Pac. 626, 628.....	13, 18
Southern Railway Co. v. Lunsford, 297 U. S. 398....	10
Spies v. People, 122 Ill. 9.....	19
State v. Parmenter, 116 P. (2d) 879.....	19
St. Louis, I. M. & S. Ry. Co. v. McWhirter, 229 U. S. 265, 277 .....	10
St. Louis, San Francisco & T. Ry. Co. v. Seale, 229 U. S. 156, 161.....	10
Union Pacific R. Co. v. Huxoll, 245 U. S. 535, 538....	10
United States v. Adams, 281 U. S. 202.....	19
United States v. Owen, 21 F. (2d) 868.....	20
United States v. Sall, 116 F. (2d) 745.....	20 g
Usselton v. People, 149 Ill. 612.....	14
Ward v. Board of County Com'rs of Love County, Okla., 253 U. S. 17, 22.....	9
West Chicago St. Railroad Co. v. Illinois ex rel. City of Chicago, 201 U. S. 506, 519, 520.....	9
Wood v. Chesborough, 228 U. S. 672, 676-680.....	9

#### CONSTITUTIONAL AND STATUTORY PROVISIONS CITED.

XIV. Amendment, Constitution of the United States .....	2, 3, 4, 11, 12, 15, 17
43 Stat. 936, 937.....	4
Sec. 237(b), Judicial Code, 28 U. S. C. A., sec. 344(b)	4
Constitution of Illinois 1870, Art. 2, Sec. 10.....	13, 17
31 L. R. A. (N. S.) 603.....	20 f

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FRANK PARKER and GEORGE MORAN,  
*Petitioners,*  
*vs.*

THE PEOPLE OF THE STATE OF ILLINOIS,  
*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI**

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MAY IT PLEASE THE COURT:

The petition of Frank Parker and George Moran respectfully shows to this Honorable Court:

**Summary Statement of the Matter Involved**

Your petitioners have been convicted of conspiracy and sentenced to jail. The judgment of the Criminal Court of Cook County, Illinois has been affirmed in the courts of review for the State. At the trial (R. 4) your petitioners claimed that as they had been previously tried and acquitted that they should not be prosecuted for a second time in this case. The trial court ruled that the previous acquittal did not bar this action and refused to permit the offered proof. When your petitioners asserted their claim in the trial court, it was alleged by them that to

proceed with the present case constituted double jeopardy and deprived petitioners of the right to due process of law as guaranteed by the fourteenth amendment to the constitution of the United States. This claim of the infringement of rights as citizens of the United States was repeated without success in the state Supreme Court and it is upon this denial that this petition is based.

Whether or not your petitioners have been placed twice in jeopardy presents a mixed question of law and fact and narrows itself down to one of identity of offenses. It appears from the record that there existed a gigantic plot to flood the country with counterfeit American Express orders or checks for money. The witness Van Bever (Abst. 7) learned of the plot and arranged with the officials of the Express Company to pretend to carry on with the conspirators in order to discover the leaders, locate the plates and break up the scheme. The defendants Keller and Sexton passed some of the bogus checks upon a department store and a shoe store in Chicago while being watched by Van Bever and the private detectives. They were followed east and arrested in the possession of counterfeit checks after having passed some on merchants in Philadelphia. After conviction and service of their sentence in Philadelphia, Keller and Sexton were returned to Chicago and prosecuted for the substantive offense of forging and uttering the checks on the shoe store. Your petitioners were charged as principals under the law which requires that accessories be so charged, but the theory of the prosecution was that your petitioners were not present but were responsible for the acts of Keller and Sexton because of the conspiracy. Your petitioners were acquitted in this first trial. Then when your petitioners were prosecuted in this the second trial, they offered to show these facts as a defense on the claim that your



petitioners had been in jeopardy. The trial court and the courts of review in the state agreed with the contention made by the prosecutor that the offenses were not the same and therefore had been no jeopardy and we now seek to bring that question here, among others, respectfully contending that the state courts have erred and your petitioners have been deprived of important fundamental rights guaranteed by the XIV amendment to the constitution of the United States.

### **Specification of Errors to Be Urged**

It is respectfully submitted that the judgment should be reversed for the following reasons:

1. The holding by the Illinois courts that there had been no former jeopardy is error.

2. The courts of review erred in refusing to reverse because of the following errors:

(a) The trial court erred in admitting improper evidence on behalf of the People and in not striking same, and in not instructing the jury to disregard said improper evidence.

(b) The trial court unduly limited and restricted counsel for the defendants in the examination of witnesses.

(c) The evidence is insufficient to support the verdict.

The trial court erred in refusing to direct a verdict as requested at the close of the case for the People and at the close of all of the evidence.

(d) The trial court erred in the giving of each instruction given at its own motion and each one given at the motion of the People and the motion of co-defendants.

(e) The verdicts are against the law and the evidence.

(f) Those shown to be principals and actors in the transaction having been acquitted and given immunity, it follows, as a matter of law, that judgment can not properly be entered against these defendants.

3. Each one of the errors committed by the state court deprived the petitioners of due process of law as guaranteed by the XIV Amendment to the Constitution of the United States and the Bill of Rights in the Constitution of Illinois.

### **Basis of the Court's Jurisdiction**

This Honorable Court may by certiorari have this cause certified to it for determination under the act of February 13, 1925, 43 Stat. 936, 937, Ch. 229, amending and re-enacting Sec. 240 (a) of the Judicial Code, 28 U. S. C. A., Secs. 344, 347. The decision in the Supreme Court of Illinois was rendered November 24, 1941, and the petitions for rehearing, filed within the time allowed, were denied on January 15, 1942. (R. 18)

### **Questions Presented**

Do the errors committed in the trial court and sanctioned by the Supreme Court of Illinois combine in depriving your petitioners of the right to a fair trial as guaranteed by the constitution and laws of the United States? Particularly, the main question is whether petitioners have been twice placed in jeopardy and thereby deprived of the protection of due process of law as guaranteed by the XIV amendment to the constitution of the United States.

The principle question narrows itself down to whether or not two prosecutions are in fact and law the same where although the indictments differ in that the first was

for the substantive offense and the second was for conspiracy. It is contended that in determining this question the court should look to the entire record, including the offered evidence, from which it will be seen that the two prosecutions were based upon the same conspiracy as to your petitioners.

The jurisdictional question, of course, is always presented. This petition will be found to be timely and, we trust, in compliance with the rules. This Honorable Court will no doubt recognize the right of petitioners to the protection of the federal constitution. The question as to whether this Honorable Court will take jurisdiction requires that this question be determined. After a state trial court refuses to permit proof of a prior acquittal holding that there had been no former jeopardy, and this holding is affirmed in the highest court of the State, can this Honorable Court look to the record, including the proof offered and so excluded to review the state courts on the federal question there presented?

### **Reasons for Granting the Writ**

The honorable Supreme Court of Illinois has sanctioned a departure by the lower court from the accepted and usual course of judicial proceeding and the state court has decided many important questions of general law in a way probably untenable and in conflict with the weight of authority.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 26374, *The People of the State of Illinois, Defendant in Error v. Frank Parker and George Moran, Impleaded, Plaintiffs in Error*, petitioners (which record is submitted herewith), and that the said judgment of the Supreme Court of Illinois may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

FRANK PARKER and GEORGE MORAN,  
*Petitioners,*

By WM. SCOTT STEWART,  
*Counsel for Petitioners.*

